

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALBERTO LIZARRAGA,
Petitioner,

v.

UNITED STATES DISTRICT COURT,
Respondent.

No. 1:23-cv-01543-KES-SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(Doc. 7)

ORDER DISMISSING PETITION FOR WRIT
OF HABEAS CORPUS AND DIRECTING
CLERK OF COURT TO ENTER JUDGMENT
AND CLOSE CASE

ORDER DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

Petitioner Alberto Lizarraga is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 2, 2023, the assigned magistrate judge issued findings and recommendations to dismiss the petition as successive. Doc. 7. Those findings and recommendations were served upon all parties and contained notice that any objections thereto were to be filed within twenty-one (21) days after service. *Id.* at 3. No objections have been filed, and the deadline to do so has expired.

In accordance with 28 U.S.C. § 636(b)(1), the Court has conducted a de novo review of

1 the case. Having carefully reviewed the entire file, the Court concludes that the magistrate
2 judge's findings and recommendations are supported by the record and proper analysis.

3 In addition, the Court declines to issue a certificate of appealability. A state prisoner
4 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of
5 his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537
6 U.S. 322, 335-336 (2003). The controlling statute in determining whether to issue a certificate of
7 appealability is 28 U.S.C. § 2253, which provides as follows:

8 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
9 district judge, the final order shall be subject to review, on appeal, by the court of
appeals for the circuit in which the proceeding is held.

10 (b) There shall be no right of appeal from a final order in a proceeding to test
11 the validity of a warrant to remove to another district or place for commitment or
12 trial a person charged with a criminal offense against the United States, or to test
the validity of such person's detention pending removal proceedings.

13 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an
appeal may not be taken to the court of appeals from—

14 (A) the final order in a habeas corpus proceeding in which the
15 detention complained of arises out of process issued by a State
court; or

16 (B) the final order in a proceeding under section 2255.

17 (2) A certificate of appealability may issue under paragraph (1) only if the
18 applicant has made a substantial showing of the denial of a constitutional
right.

19 (3) The certificate of appealability under paragraph (1) shall indicate which
20 specific issue or issues satisfy the showing required by paragraph (2).

21 If a court denies a petitioner's petition, the court may issue a certificate of appealability
22 only when a petitioner makes a substantial showing of the denial of a constitutional right. 28
23 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that
24 "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have
25 been resolved in a different manner or that the issues presented were 'adequate to deserve
26 encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting
27 *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

28 In the present case, the Court finds that Petitioner has not made the required substantial

1 showing of the denial of a constitutional right to justify the issuance of a certificate of
2 appealability. Reasonable jurists would not find the Court's determination that Petitioner is not
3 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to
4 proceed further. Thus, the Court declines to issue a certificate of appealability.

5 Accordingly,

- 6 1. The Findings and Recommendations issued on November 2, 2023, (Doc. 7), are
7 adopted in full;
- 8 2. The petition for writ of habeas corpus is dismissed;
- 9 3. The Clerk of Court is directed to enter judgment and close the case; and
- 10 4. The Court declines to issue a certificate of appealability.

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13 IT IS SO ORDERED.

14 Dated: April 2, 2024



UNITED STATES DISTRICT JUDGE